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November 1, 2004  
Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : Carl P. Pearson  
Serial No : 09/669,087  
Filed : September 25, 2001  
For : VIDEO GAME SYSTEM USING TRADING CARDS

Art Unit: 3713  
Examiner: J.M. Hotaling

MAIL STOP Appeal Brief-Patents  
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APPEAL BRIEF

Dear Sirs:

This is the Brief on Appeal for the applicant in the above-identified patent application.

1. Real Party in Interest

The real party in interest is set forth in the above caption.

2. Related Appeals and Interferences

There are no related appeals and interferences concerning this appeal.

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3. Status of Claims

Claims 1-28 are pending in this application and have all been rejected. Claims 1-28 are appealed.

4. Status of Amendments

No amendments have been filed subsequent to the final rejection of June 2, 2004.

5. Summary of the Invention

Applicant's invention, in one respect (claims 1-22), is a video game system using trading cards selected by the players of the game. The video game system includes a local electronic game system which in turn includes a control system which carries out the game, operating in accordance with a stored software program. The local electronic game system is used with a video screen which displays the playing of a selected video game featuring characters/players on the trading cards. The trading cards have character/player information thereon, including characteristics which define the playing of the game. The video game system also includes an identification system, such as a scanner or similar device, for identifying the trading cards selected by the players for playing the video game.

A server control unit has the capability of connecting the local electronic game system to a website at a remote location through a global computer network. At the website is a processing system for verifying that the players of the video game have the right to use the trading cards previously selected by the players for the playing of the game. The website further includes means for storing additional information associated with the characters/players on the individual trading cards and for downloading that information to the control system in the local electronic game. The control system at the local electronic game includes the capability for receiving the downloaded information from the website, and further is capable of using both the downloaded information and the character information from the trading cards to carry out the video game.

The local electronic game system is shown at 12 in Figure 1, with the server for connecting the local game to the global computer network shown at 16 and the control system for the local game at 13. The video screen is shown at 14, while the website processing system is shown at 18. The identification system is shown at 22, while the individual

playing cards are shown at 30. Character/player information is present on the trading cards. The above system is described in the specification at page 4, lines 1-32; page 5, lines 16-2; page 6, lines 8-19 and 28-37; page 9, lines 19-23; page 10, lines 9-11; and page 12, lines 16-29.

In a second aspect of the invention (claims 23-28), a video game system includes an electronic game system which includes a video screen and control system for carrying out the video game and controlling the display on the video screen in accordance with a stored software program and the character/player information on the cards. The video game system also includes a reader for the reading of the trading cards selected by the players for playing the video game, to identify and verify the selected cards for the control system. The electronic game system, the video screen and the trading card reader are all combined in a single, stand-alone unit. The above is disclosed at page 4, lines 20-23, where it is indicated that the video game can be computer or hand-held device such as for a cell phone (monitor 14 can be a cell phone display); page 10, lines 35-37; and page 11, lines 25-30. The resulting system is a stand-alone, single unit. Original claim 23 also discloses the subject matter.

#### 6. Issues

The issue presented by this appeal is whether or not claims 1-28 are properly rejected under 35 USC §103 over Pepple in view of Sehr and Pearson.

#### VI. Grouping of Claims

Claims 1-22 stand together and claims 23-28 stand together. Both groups of claims are directed toward a video game system. The system of claims 1-22 is directed toward a web-based system which includes the ability of a local electronic game system to communicate with a website over a global computer network, while claims 23-28 are directed toward a unitary stand-alone video game system, not involving a web capability. Those two sets of claims thus present separate issues of patentability.

#### VII. Argument

With respect to claims 1-22, the applicant and the examiner agree that the primary reference to Pepple broadly and in considerable detail discloses the use of electronic trading cards (ETCs), which can

be used in video games (including adventure games), as well as other applications. The ETCs can be provided in digital media and can be traded, sold, auctioned and collected on-line.

Pepple's system is capable of carrying out on-line activities with a computer or an advanced video game system. These include accessing various ETC files and utilities at a remote location, which in turn support browsing, displaying, trading, buying and selling ETCs. Pepple provides considerable teaching relative to the manufacture, trading, collecting and use of ETCs. However, there are two significant differences between Peppel's teaching and the system defined in applicant's claim 1.

First, although Pepple does teach interaction between its system and a remote website, there is no teaching of the portion of applicant's claimed system in which information stored at a remote website associated with a character on a selected trading card (including for instance enhanced or up-to-date performance information) is downloaded directly into the control system of the local electronic game system, which is capable of receiving the downloaded information and then using the downloaded information and the information present on trading cards to carry out the game.

The character information used in Pepple for carrying out the video game comes into play only from the medium of the ETCs themselves (the trading cards). While additional updated information about a character/player can be provided from the remote website (see col. 9, line 20), it results in a new ETC and is not directly loaded into a control system for the video game. Applicant's system is capable of using both downloaded information from a website and information on a trading card to carry out the game.

This is a significant difference. In his final rejection, the examiner, in response to previous argument on this point, simply notes that the rejection is based on a "combination of references" and points particularly to Sehr which, the examiner states, is capable of performing various application routines and communications necessary for the system's operation. While there is certainly substantial communication capability disclosed in Sehr, as the examiner has pointed out, Sehr teaches updating data on a card (see col. 10, lines 26-62). There is no teaching or suggestion of a video game system using trading cards in which information concerning the subject matter of individual trading cards selected for playing of the video

game, such as a particular player in a sports-based video game, is downloaded directly into the control system of the local electronic game, bypassing the trading cards themselves.

Applicant's system thus maintains the trading cards in their original, as-issued condition, while allowing significant flexibility of accurately updating the video game information for playing the game, in a simple, expedient and inexpensive manner.

This is a significant structural and operational difference over existing video games using trading cards, including specifically Pepple and Sehr. Accordingly, claim 1 and the claim dependent therein are patentable over the combination of Pepple, Sehr and Pearson.

Second, there is no teaching in Pepple verifying that the individual players of the game have the right to use the trading cards selected by them for the playing of the particular video game. The examiner and applicant's attorney agree on this point. The examiner has cited the secondary reference to Sehr as supplying that teaching. Applicant, however, disagrees with the examiner relative to Sehr. Sehr teaches various security measures and capabilities to authenticate particular cards, to ensure that the card in the possession of a user is not only a validly issued card but also to verify the identity of the cardholder and confirm his/her rightful ownership of the trading card being used in the game. Verification in Sehr concerns ownership of the card.

This is different than applicant's claimed system. In the claimed system, a particular player may acquire the right to use (not necessarily own), through various means, a particular trading card for a selected video game. Thus the player may not necessarily own the card, but only the right to use the card for a particular game for a particular period of time. The right to use a particular trading card in a particular video game is a restricted right, which typically is quite different than ownership. The owner of a card in Sehr can use the card for any purpose, in any context. With applicant's invention, however, an owner may in fact be precluded from using the card in a particular circumstance, if he has transferred the right to use it for a particular game.

The combination of Pepple, Sehr and Pearson thus does not teach or suggest such a limitation. The examiner's comments with respect to Pokemon/Magic the Gathering are not applicable. The issue concerns a

card which is appropriate for use in a video game system, such as a sports game, and a particular player having to verify that he/she has the right to use that card in playing the video game. As discussed above, this right to use is independent of ownership of the card. None of the references teach that particular characteristic of applicant's system. Accordingly, claim 1 and the claims dependent thereon are patentable over the combination of Peppel, Sehr and Pearson for this reason as well.

With respect to claims 22-28, applicant has claimed a single, stand-alone configuration of a video game using trading cards. The word "single" here means a unitary device combining three specific elements of a video game system into a single unit, specifically, an electronic game system which operates with information from the trading cards, a display for the game and a reader for the trading cards. The combination of those three specific elements of a video game system into a single unit permits hand-held operation of a video game using trading cards. The combination device is easy to transport but still retains the wide-ranging capability of a video game having trading card-based data input. Previously, hand-held video games had only self-contained information to play the game. This resulted in a rather restricted, unchangeable capability.

On the other hand, video games using trading cards, such as Pearson, all comprise a plurality of separate units, which are typically quite large, so that they are not easily transportable. Applicant acknowledges that the separate elements of the video game system are individually well known. It is the combination of the three separate claimed elements into a stand-alone, single unit which is the focus of the claims, i.e. the patentable subject matter.

As stated in several amendments, combining the three specified elements into a single unit is not a trivial exercise. Significant design work was necessary in order to carry it out successfully. The examiner's action simply points out hand-held devices, which include pocket-size configurations, such as cell phones. Standard cell phones and other stand-alone devices, however, do not teach applicant's claimed video game system. The examiner further states that "in a stand-alone system, the components do not have to be in one 'box', as they can be separately attached, like a personal computer". However, applicant's claim language specifically indicates that the system is a single, stand-alone unit, in which the electronic game system, the

video screen and the reader are combined. This language defines a "single box" structure.

The examiner has not cited any reference which discloses or suggests such an arrangement, nor has the examiner provided any teaching or reasons why such a combination would be obvious. Furthermore, obviousness is contraindicated, since video games comprising separate elements have been known for some time, since there is a continuing motivation to make video games as small, accessible and as portable as possible, along with as great a game capability and flexibility as possible. Only applicant has achieved that desired result. Accordingly, claim 23 and the claims dependent thereon are patentable over Peppel, Sehr and Pearson.

Conclusion

In view of the above, the examiner's rejection of claims 1-28 under 35 USC §103 should be overturned. Enclosed is the required fee of \$170.00. Any additional fees associated with this communication can be charged to deposit account 07-1900

Respectfully submitted,  
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APPENDIX  
CLAIMS ON APPEAL

1. A video game system using trading cards, comprising:
  - a local electronic game system for use with a video screen for displaying the playing of a selected video game featuring characters on trading cards, the characters having associated character information, including characteristics which define the playing of the game, the electronic game system including a control system for carrying out the video game and controlling the display on the screen in accordance with a stored software program and in accordance with the character information associated with the trading cards selected by the players of the game for use in the game;
  - trading cards having characters indicated thereon for playing the video game;
  - an identification system for identifying the trading cards selected by players for playing the video game;
  - a server control unit for connecting the local electronic game system to a website at a remote location through a global computer network; and
  - a processing system at the website for verifying that the players of the video game have the right to use the selected trading cards in the playing of the selected video game, wherein the website includes means for storing information associated with the characters on said trading cards and for downloading said information to the video game control system, which includes means for receiving said downloaded information and which is capable of using said downloaded information and said associated character information from the trading cards to carry out the video game after the selected trading cards have been identified and the player's rights to use the selected trading cards have been verified.
2. A system of claim 1, wherein the trading cards include specialty cards which affect the characteristics of characters on the trading cards.
3. A system of claim 1, wherein the trading cards include specialty cards which result in a change of the rules of the video game.
4. A system of claim 1, wherein the trading cards include product cards which affect performance of a selected aspect of the video game.

5. A system of claim 4, wherein the selected aspect is a vehicle.

6. A system of claim 1, wherein the website has the capability of registering trading cards to a particular player.

7. A system of claim 1, wherein selected trading cards have a unique identifier associated with an owner of said selected trading cards.

8. A system of claim 1, wherein the website is accessible by players to permit acquisition of additional trading cards for the video game.

9. A system of claim 8, wherein the acquisition is a right to temporarily use a selected trading card for the video game being played.

10. A system of claim 1, wherein the video game system is adapted so as to permit a change of rules of the video game during the playing of the game when a player plays a trading card affecting such rules during the playing of the game.

11. A system of claim 1, wherein the video game accepts replica trading cards from a player and wherein the website includes processing means for verifying the ownership of an associated genuine trading card for a player using a replica trading card in the video game.

12. A system of claim 1, wherein the identification system is a scanner for the trading cards.

13. A system of claim 12, wherein the scanner is combined with the electronic game system in a single unit.

14. A system of claim 1, wherein the video screen is combined with the electronic game system in a single unit.

15. A system of claim 1, wherein the control system is located at the website.

16. A system of claim 1, wherein the electronic game system, the video screen and the control system are contained in a cell phone.

17. A system of claim 1, wherein the electronic game system, the video screen and the control system are contained in a personal computer.

18. A system of claim 1, wherein the website includes means for displaying selected individual trading cards or groups of trading cards.

19. A system of claim 1, wherein the trading cards have an identifier associated therewith.

20. A system of claim 19, wherein the identifier is a bar code.

21. A system of claim 19, wherein the identifier is positioned on the trading card.

22. A system of claim 19, wherein the identifier is positioned on a container for the trading card.

23. A video game system using trading cards, comprising:

an electronic game system for use with a video screen to display the playing of a video game featuring characters on trading cards, the characters having associated character information, including characteristics which define the playing of the game, the electronic game system including a control system for carrying out the video game and controlling the display on the screen in accordance with a stored software program and in accordance with the character information associated with the trading cards selected by the player of the game for use in the game;

a reader for reading the trading cards selected by players for playing the video game, so as to identify the selected cards to the control system, wherein the electronic game system, the video screen and the reader are combined in a single, stand-alone unit.

24. A system of claim 23, wherein the character information is contained on the trading cards.

25. A system of claim 23, wherein the character information is contained in a memory portion of the control system and wherein each card has an identifier which links the card to its associated character information in memory.

26. A system of claim 23, wherein the character information is contained partially on the trading cards and partially in memory.

27. A system of claim 23, wherein the trading cards include specialty cards which affect the character information on the cards, the rules of the game and the operation of equipment used in the game.

28. A system of claim 23, wherein the video game system is portable.